

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

JOSE AVALOS,

Defendant.

CASE NO. 8:13CR88

MEMORANDUM AND ORDER

This matter is before the Court pursuant to the Judgment of the United States Court of Appeals for the Eighth Circuit (Filing No. 204), transferring to this Court the Defendant's "application for leave to file a successive motion to vacate under 28 U.S.C. § 2255 . . . for consideration as to whether the application should be docketed as an initial § 2255 motion." The record reflects that the Defendant Jose Avalos filed an initial appeal of his conviction, which was affirmed by the Court of Appeals on March 24, 2016. (See Filings No. 193-94.) On April 25, 2016, Defendant filed a "Motion for an Order Directing Appellate Counsel Pfeffer to Release Petitioner's Entire Case File for Appellate Purposes Pursuant to Rule 1.16(d) of the ABA Model Rules of Professional Conduct," (Filing No. 195.) That motion was denied by Magistrate Judge Thomas D. Thalken on May 25, 2016. (See Filing No. 198.) Defendant appealed the denial to the undersigned, and the appeal was denied on June 15, 2016. (See Filing No. 202.) The docket does not reflect any petition filed by Defendant pursuant to 28 U.S.C. § 2255, nor can his motion at Filing No. 195 reasonably be construed as such. Nor does the docket reflect any application to file a successive motion pursuant to 28 U.S.C. § 2255.

In response to the Court of Appeals' directive (Filing No. 204) this court concludes that there is nothing in the record that may be construed as, or should be docketed as, an initial motion under 28 U.S.C. § 2255. Therefore,

IT IS ORDERED that there are no issues or motions currently pending in this case and no further action will be taken by the Court.

DATED this 20th day of July, 2016.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge